

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

**CATHERINE M. SOPPE  
(F/K/A McDUFFEY),**

**Plaintiff,**

**vs.**

**MICHAEL J. ASTRUE, Commissioner  
of Social Security,**

**Defendant.**

**No. C07-1009**

**RULING ON REQUEST FOR  
JUDICIAL REVIEW**

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## ***I. INTRODUCTION***

This matter comes before the Court on the Complaint (docket number 5) filed by Plaintiff Catherine M. Soppe, f/k/a Catherine M. McDuffey, on April 6, 2007, requesting judicial review of the Social Security Commissioner's decision to deny her application for Title II disability insurance benefits and Title XVI supplemental security income ("SSI") benefits. Soppe asks the Court to reverse the decision of the Social Security Commissioner ("Commissioner") and order the Commissioner to provide her disability insurance benefits and SSI benefits. In the alternative, Soppe requests the Court to remand this matter for further proceedings.

## ***II. PRIOR PROCEEDINGS***

Soppe applied for disability insurance benefits and SSI benefits on June 10, 2004. In her application, Soppe alleged an inability to work since February 27, 2003 due to debilitating back pain. Soppe's applications were denied on August 26, 2004. On January 14, 2005, her applications were denied on reconsideration. On March 7, 2005, Soppe requested an administrative hearing before an Administrative Law Judge ("ALJ"). On December 14, 2005, Soppe appeared with counsel, via video conference, before ALJ John P. Johnson for an evidentiary hearing. Soppe and vocational expert Elizabeth M. Albrecht testified at the hearing. In a decision dated July 25, 2006, the ALJ denied Soppe's claim. The ALJ determined that Soppe was not disabled and was not entitled to disability insurance benefits or SSI benefits because she was functionally capable of performing work that exists in significant numbers in the national economy. Soppe appealed the ALJ's decision. On February 6, 2007, the Appeals Council denied Soppe's request for review. Consequently, the ALJ's July 25, 2006 decision was adopted as the Commissioner's final decision.

On April 6, 2007, Soppe filed this action for judicial review. The Commissioner filed an answer on June 11, 2007. On July 10, 2007, Soppe filed a brief arguing there is not substantial evidence in the record to support the ALJ's finding that she is not disabled and that there is other work she can perform. On September 5, 2007, the Commissioner

filed a responsive brief arguing the ALJ's decision was correct and asking the Court to affirm the ALJ's decision. Soppe filed a reply brief on September 16, 2007. On May 9, 2007, both parties consented to proceed before the undersigned in this matter pursuant to the provisions set forth in 28 U.S.C. § 636(c).

### ***III. PRINCIPLES OF REVIEW***

Title 42, United States Code, Section 405(g) provides that the Commissioner's final determination following an administrative hearing not to award disability insurance benefits is subject to judicial review. 42 U.S.C. § 405(g). Pursuant to 42 U.S.C. § 1383(c)(3), the Commissioner's final determination after an administrative hearing not to award SSI benefits is subject to judicial review to the same extent as provided in 42 U.S.C. § 405(g). 42 U.S.C. § 1383(c)(3). 42 U.S.C. § 405(g) provides the Court with the power to: "[E]nter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner . . . with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). "The findings of the Commissioner . . . as to any fact, if supported by substantial evidence, shall be conclusive . . ." *Id.*

The Court must consider "whether the ALJ's decision is supported by substantial evidence on the record as a whole." *Vester v. Barnhart*, 416 F.3d 886, 889 (8th Cir. 2005) (citing *Harris v. Barnhart*, 356 F.3d 926, 928 (8th Cir. 2004)). Evidence is "substantial evidence" if a reasonable person would find it adequate to support the ALJ's determination. *Id.* (citing *Sultan v. Barnhart*, 368 F.3d 857, 862 (8th Cir. 2004)). Furthermore, "[s]ubstantial evidence is 'something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions does not prevent an administrative agency's findings from being supported by substantial evidence.'" *Baldwin v. Barnhart*, 349 F.3d 549, 555 (8th Cir. 2003) (quoting *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989), in turn quoting *Consolo v. Fed. Mar. Comm'n*, 282 U.S. 607, 620 (1966)).

In determining whether the ALJ's decision meets this standard, the Court considers "all of the evidence that was before the ALJ, but it [does] not re-weigh the evidence."

*Vester*, 416 F.3d at 889 (citing *Guilliams v. Barnhart*, 393 F.3d 798, 801 (8th Cir. 2005)). The Court not only considers the evidence which supports the ALJ's decision, but also the evidence that detracts from his or her decision. *Guilliams*, 393 F.3d at 801. "[E]ven if inconsistent conclusions may be drawn from the evidence, the agency's decision will be upheld if it is supported by substantial evidence on the record as a whole." *Id.* (citing *Chamberlain v. Shalala*, 47 F.3d 1489, 1493 (8th Cir. 1995)).

#### ***IV. FACTS***

##### ***A. Soppe's Education and Employment Background***

Soppe was born in 1976. She completed the tenth grade. She has not earned a GED. Soppe worked as a meat cutter in 1994 for FDL Foods, Inc. In 1995, she worked for AAA Maintenance.<sup>1</sup> From 1996 - 2003, Soppe worked at the Mt. Carmel Nursing Home. Soppe's work duties were similar to those of a certified nursing assistant. Specifically, she worked with elderly women and got them up in the morning and bathed, dressed, and fed them. On an average day, she had to lift a maximum of 180-200 pounds. In addition, beginning in 2003, Soppe had side jobs providing in-home care to elderly women. At the time of the administrative hearing, Soppe continued to have one in-home patient. She testified at the hearing that she spent about 45 minutes per week with this woman. She testified that her only job is to change the woman's pad while the woman's children lifted her up.<sup>2</sup>

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<sup>1</sup> See Administrative Record at 58 (Soppe's Detailed Earnings Query). It is unclear from the record what Soppe's duties were in this job.

<sup>2</sup> Prior to her automobile accident in February 2003, Soppe spent approximately six hours per week with this patient. At that time, Soppe lifted her, changed her, dressed her and brushed her teeth. Soppe also walked with her and sat with her. Soppe has not done any of these activities since her accident.

## ***B. Administrative Hearing Testimony***

### ***1. Soppe's Testimony.***

At the December 14, 2005 administrative hearing, Soppe testified that she gets up at 7:30 am with her children<sup>3</sup> and fixes them breakfast with the help of her oldest daughter. She testified that her children dress themselves. Soppe's two oldest children leave for school at 8:15 a.m. Soppe watches her youngest daughter until 1:00 p.m. She testified that her children help her with laundry and vacuuming. Soppe testified that she has a driver's license, but only uses it to drive her youngest daughter to pre-school at 1:00 p.m. and to pick all three of her children up from school between 4:00 p.m. and 4:30 p.m. Soppe testified that her boyfriend at the time of the hearing, Christopher Soppe, also helped her with her daily activities. Specifically, Soppe testified that Christopher Soppe helped her care for her children, take out the garbage, mow the lawn, sweep, make her bed, and clean up the house.

At the hearing, Soppe and her attorney had the following colloquy regarding her experiences of pain:

Q: And, as a result of the motor vehicle accident, you talked about the broken wrists, pelvic fracture, the two burst discs in your back with the appliances inserted and the head trauma. . . . Are there any other problems that you'd like to present today?

A: Just that I hurt a lot.

Q: As you stand here today, where do you hurt?

A: My back and my bones feel achy.

Q: Where do your bones feel achy?

A: My legs, my legs and my arms feel like jelly.

Q: Do you have problems with numbness or tingling in your arms or legs?

A: No, just sore.

Q: Where is the pain in your back? Is it your lower back, your middle back?

A: My whole middle back. Yeah.

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<sup>3</sup> Soppe has three children. At the time of the hearing, she had two daughters ages 10 and 3 and a son age 6.

Q: Is that roughly in the area where the appliances were inserted?

A: Yeah. . . .

Q: And have you had this pain since the accident?

A: Yes, I have.

Q: Has it gotten better or worse or stayed the same since the accident?

A: It hasn't changed at all.

Q: Are there good days and bad days. . . .

A: Yeah. . . . [On] better days . . . I can take my children for a little walk or, you know, be able to go down by the river with my kids and feed the ducks. . . .

Q: And that's on a good day?

A: Yeah.

Q: On a bad day, are your activities limited more than average?

A: I'm pretty much in bed.

Q: So there are days, because of the pain, your back, you don't get out of bed?

A: No, I do not.

. . .

Q: And how many days per month, if any, do you have these bad days?

A: Oh, I'd say about three or four times a week.

(Administrative Record at 317-18)

Soppe also testified that her back pain makes it uncomfortable for her to sit for more than 20 to 25 minutes at a time. She testified that after 20 minutes, she usually stands up and moves around for about 10 minutes before sitting down again. Soppe further testified that her back pain makes walking long distances difficult. She testified that walking one city block would be difficult. Additionally, Soppe testified that her back pain causes her sleeping problems. She testified that she gets up several times at night due to the pain. Soppe also testified regarding the head trauma from her auto accident. She testified that she gets very severe headaches which last for about two days once per month. Soppe testified that she does not get out of bed until the headaches subside.

## ***2. Vocational Expert's Testimony.***

Vocational expert Elizabeth M. Albrecht also testified at the December 14, 2005 hearing. The ALJ provided the vocational expert with a hypothetical for an individual with the following limitations:

[The individual] cannot lift more than 25 pounds, routinely lift 10 pounds, with standing of one hour at a time, and with walking and standing of six hours out of an eight-hour day, sitting of an hour at a time and sitting of six hours out of an eight-hour day, with only occasional bending, stooping, squatting, kneeling, crawling, or climbing. This individual should not work at unprotected heights or on hazardous moving machinery.

(Administrative Record at 344) Based on the hypothetical, the vocational expert determined that such an individual could perform some light semiskilled jobs, including companion (2,500 jobs in Iowa), case aide (600 jobs in Iowa), and blind aide (2,500 jobs in Iowa). The vocational expert also determined that an individual with the limitations provided in the ALJ's hypothetical could perform light unskilled jobs, including laundry folder (150 jobs in Iowa), marker (2,200 jobs in Iowa), and small products assembler (5,200 jobs in Iowa). The ALJ provided the vocational expert with a second hypothetical which described an individual with the following limitations:

[The individual] could not lift more than five pounds, standing of 10 minutes at a time, sitting of 20 to 25 minutes at a time and walking one block at a time, with only occasional bending, stooping, squatting, kneeling, or climbing.

(Administrative Record at 346) The vocational expert determined that an individual with the limitations provided in the ALJ's hypothetical could perform some sedentary unskilled jobs, including final assembler (850 jobs in Iowa), charge account clerk (425 jobs in Iowa), and addresser (300 jobs in Iowa).

## ***C. Soppe's Medical History***

On February 27, 2003, Soppe was admitted to the Finley Hospital emergency room for poly-trauma following a motor vehicle accident. Soppe suffered a T12 burst fracture,

mandible fractures, a left wrist fracture, a right wrist sprain, a right radial head fracture, and left pubic ramus fractures. On the date she was admitted, Dr. Daryl E. Bee, D.D.S., performed surgery on Soppe's jaw to correct grossly displaced left parasymphysis of the mandible, grossly displaced right angle fracture of the mandible, multiple fractured and missing maxillary teeth, and oral lacerations. Soppe's left wrist fracture was also treated on this date.

On March 6, 2003, Dr. Michael P. Chapman, M.D., performed surgery on Soppe's back, including T11-12 decompression and correction of traumatic kyphotic deformity of T10 to L1. Soppe's back surgery involved the placement of 5.5mm screws bilaterally at T10, T11, and L1 and infralaminar hooks at L1. After the screws and hooks were placed, Dr. Chapman placed a rod into the screws and hooks for the purpose of restoring the sagittal contour of Soppe's back with rigid fixation.

Soppe was discharged from the hospital on March 13, 2003. She was given Lortab 5/500 for pain medication and encouraged to do as much walking as she could. However, she was also told to avoid bending, lifting, and twisting. Follow-up care was scheduled.

At a follow-up appointment on June 9, 2003, Dr. Chapman recommended that Soppe should become more aggressive with aerobic conditioning and trunk strengthening. Dr. Chapman opined that it would be at least three more months before Soppe could return to work. Dr. Chapman also opined that before returning to work, Soppe would need aggressive physical therapy in order to be able to perform her job duties. Dr. Chapman also noted that Soppe was not ready for any aggressive exercise involving bending, lifting, or twisting.

On July 24, 2003, Soppe visited Dr. Chapman, before her scheduled appointment, complaining of worsening pain. Soppe informed Dr. Chapman that she regularly experienced severe pain in the paraspinal region at the thoracolumbar junction of her back. Dr. Chapman examined Soppe's back and found no problems. Dr. Chapman concluded that Soppe was primarily suffering from muscle pain. Dr. Chapman opined that "[w]ith her getting further out from surgery and trying to do a bit more, I think her scarred



muscles simply cannot take it.”<sup>4</sup> Dr. Chapman suggested physical therapy to strengthen her muscles as treatment.

On September 17, 2003, at her follow-up appointment six months after the accident, Dr. Chapman found that Soppe was doing well. Dr. Chapman noted that she had pain with certain activities and the more active she was, the greater her pain. Dr. Chapman also noted that Soppe would need a 25-pound lifting restriction when she returned to work at the nursing home.

On December 3, 2003, Soppe visited Dr. Chapman complaining of constant back pain. Dr. Chapman noted that Soppe was bothered by the pain when she was sitting, standing, walking, or lying down. Dr. Chapman examined her back and determined that there had been no change from previous examinations. Dr. Chapman suggested aggressive trunk strengthening as treatment to alleviate the pain.

On March 17, 2004, Soppe had her one year follow-up appointment with Dr. Chapman. At this appointment, Soppe reported that she felt okay in the morning when she woke up, but by the end of the day, she was very stiff and in pain. Dr. Chapman noted that she uses Hydrocodone as medication for her pain. Dr. Chapman further noted that Soppe had been unable to return work to “any significant” degree. Dr. Chapman also completed a “Disability Certification” form in which he stated Soppe’s disability required no heavy lifting, no bending, and frequent changes in position.

On August 16, 2004, Dr. Peggy Mulderig, M.D., completed a disability examination of Soppe for Disability Determination Services (“DDS”). Dr. Mulderig diagnosed Soppe with chronic pain syndrome. Dr. Mulderig opined that Soppe should be limited to:

no lifting greater than 10 pounds. [Soppe] would not be able to sit for more than 1 hour at a stretch. Standing would be limited to 1 hour at a stretch and ideally [Soppe] would be able to sit or stand at [her discretion].

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<sup>4</sup> See Administrative Record at 193.

(Administrative Record at 215)

On August 26, 2004, a doctor<sup>5</sup> provided a Residual Functional Capacity (“RFC”) assessment for Soppe at the request of the Social Security Administration. The doctor concluded that Soppe could (1) occasionally lift 20 pounds, (2) frequently lift 10 pounds, (3) stand and/or walk with normal breaks for about six hours in an eight-hour workday, (4) sit with normal breaks for about six hours in an eight-hour workday, and (5) occasionally climb, balance, stoop, kneel, crouch, and crawl. The doctor also concluded that Soppe should avoid concentrated exposure to hazards such as machinery and heights.

In July and August, 2004, Soppe was referred to Dr. Timothy J. Miller, M.D., by Dr. Chapman for pain management. Dr. Miller diagnosed Soppe with chronic back pain. Dr. Miller prescribed a Duragesic for Soppe’s pain management.

In January 2005, Soppe saw Dr. Mulderig regarding her back pain. Dr. Mulderig affirmed her August, 2004 diagnosis that Soppe suffered from chronic pain syndrome. In March, 2005, Dr. Mulderig took Soppe off the Duragesic and prescribed Oxycontin for her back pain.

In a letter dated March 30, 2005, Dr. Chapman noted that Soppe continued to have a number of aches and pains. Dr. Chapman attributed Soppe’s aches and pains to the motor vehicle accident which occurred on February 27, 2003. Dr. Chapman opined that “[Soppe] is over 2 years out from [the injuries caused by her motor vehicle accident] so it is my opinion that residual symptoms at this time are likely permanent and prognosis for further improvement is poor.”<sup>6</sup>

Soppe saw Dr. Mulderig in April and May, 2005, with further complaints of back pain. Dr. Mulderig continued to treat her pain with Oxycontin. Dr. Mulderig also

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<sup>5</sup> The signature of the doctor who reviewed Soppe’s medical records and provided the Social Security Administration with a Residual Functional Capacity assessment for her is illegible. *See* Administrative Record at 226.

<sup>6</sup> *See* Administrative Record at 258.

requested that Soppe submit to a routine drug screen. The test results of the drug screen showed THC in Soppe's system. Soppe admitted occasional marijuana use for her pain. At the end of May, 2005, Dr. Mulderig had Soppe submit to a second drug screen. The results of the second drug screen showed continued marijuana use. Dr. Mulderig withdrew her care from Soppe, but renewed Soppe's prescriptions for Oxycontin and also prescribed Methadone for her pain. In addition, Dr. Mulderig referred Soppe to doctors at the University of Iowa Hospitals and Clinics ("UIHC") in Iowa City, Iowa.

On August 30, 2005, Soppe visited Dr. Joseph Chen at the UIHC.<sup>7</sup> Dr. Chen diagnosed Soppe with chronic thoracolumbar pain. Dr. Chen noted a 25% reduction in Soppe's range of motion of her spine in all directions due to her chronic pain. Dr. Chen also noted tenderness over the erector spinae muscles around the thoracolumbar junction on Soppe's back. Dr. Chen also found ipsilateral gluteal attachment pain and atrophy and weakness in these muscles when Soppe performed a single leg stance. Dr. Chen proposed treatment through physical therapy and home exercise.

On September 19, 2005, Soppe was examined by the Spine Rehabilitation Evaluation Team ("Team") at the UIHC. Dr. Chen was the Team's leader. The evaluation consisted of a psychological evaluation, a physical therapy functional activity evaluation, a physical therapy cardiovascular evaluation, and a vocational evaluation. The psychological evaluation indicated that Soppe suffered from minimal depression. During the psychological phase of the evaluation, Soppe reported that she has difficulty sleeping, felt fatigued, and had difficulty concentrating due to her chronic back pain. The Team recommended breathing and relaxation exercises for treatment. The physical therapy functional activity evaluation provided that Soppe could lift 5 pounds from a deep squat position, lift 20 pounds from 10 inches off the floor, and lift 15 pounds from waist level to chest level. The functional activity evaluation also showed that Soppe could push/pull a 20 pound sled. Soppe's lower abdominal strength was 1/5. The evaluation further

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<sup>7</sup> Dr. Chen works in the Department of Orthopaedics & Rehabilitation at the UIHC.

revealed that Soppe's "sitting tolerance" was 20-25 minutes with support and minimal time sitting without support. The Team recommended a six-week home exercise program. The physical therapy cardiovascular evaluation showed that Soppe had an extreme functional aerobic impairment. The Team recommended a home exercise program which consisted of walking, water exercise, and stationary bike riding.<sup>8</sup> The Team summarized Soppe's medical diagnosis as follows:

the mid-back pain that you are currently experiencing is primarily soft tissue, muscular in nature. Although this pain can be very frustrating and uncomfortable, it is not causing any further damage or harm to your spine and does not require further surgery, chronic use of medications, injections or other invasive procedures. It will respond to a much more active, healthy lifestyle consisting of increased activities and a solid home program of physical therapy and psychological coping skills.

(Administrative Record at 241)

## **V. CONCLUSIONS OF LAW**

### **A. ALJ's Disability Determination**

The ALJ determined that Soppe is not disabled. In making this determination, the ALJ was required to complete the five-step sequential test provided in the social security regulations. *See* 20 C.F.R. § 404.1520(a)-(f); *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987); *Page v. Astrue*, 484 F.3d 1040, 1042 (8th Cir. 2007); *Anderson v. Barnhart*, 344 F.3d 809, 812 (8th Cir. 2003). The five steps an ALJ must consider are:

(1) whether the claimant is gainfully employed, (2) whether the claimant has a severe impairment, (3) whether the impairment meets the criteria of any Social Security Income listings, (4) whether the impairment prevents the claimant from performing past relevant work, and (5) whether the impairment necessarily prevents the claimant from doing any other work.

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<sup>8</sup> The vocational evaluation offered nothing important in terms of Soppe's medical history.

*Goff v. Barnhart*, 421 F.3d 785, 790 (8th Cir. 2005) (citing *Eichelberger v. Barnhart*, 390 F.3d 584, 590 (8th Cir. 2004)); *see also* 20 C.F.R. § 404.1520(a)-(f). “If a claimant fails to meet the criteria at any step in the evaluation of disability, the process ends and the claimant is determined to be not disabled.” *Eichelberger*, 390 F.3d at 590-91 (citing *Ramirez v. Barnhart*, 292 F.3d 576, 580 (8th Cir. 2002)).

“To establish a disability claim, the claimant bears the initial burden of proof to show that he [or she] is unable to perform his [or her] past relevant work.” *Frankl v. Shalala*, 47 F.3d 935, 937 (8th Cir. 1995) (citing *Reed v. Sullivan*, 988 F.2d 812, 815 (8th Cir. 1993)). If the claimant meets this burden, the burden of proof then shifts to the Commissioner to demonstrate that the claimant retains the residual functional capacity to perform a significant number of other jobs in the national economy that are consistent with claimant’s impairments and vocational factors such as age, education, and work experience. *Id.* The RFC is the most an individual can do despite the combined effect of all of his or her credible limitations. 20 C.F.R. § 416.945. “‘It is the ALJ’s responsibility to determine a claimant’s RFC based on all relevant evidence, including medical records, observations of treating physicians and others, and claimant’s own descriptions of his [or her] limitations.’” *Tellez v. Barnhart*, 403 F.3d 953, 957 (8th Cir. 2005) (quoting *Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir. 2001)).

The ALJ applied the first step of the analysis and determined that Soppe had not engaged in substantial gainful activity since her alleged onset date, February 27, 2003. At the second step, the ALJ concluded, from the medical evidence, that Soppe had the following impairments a “severe burst fracture at T12 and fusion of T10 to L1 and a history of fractures of the left wrist, right elbow, left pubis ramus and jaw.” At the third step, the ALJ found that Soppe “[did] not have an impairment or combination of impairments listed in or medically equal to one listed in [20 C.F.R. § 404,] Appendix 1, Subpart P, Regulations No. 4.” At the fourth step, the ALJ determined Soppe’s RFC as follows:

[Soppe] can lift a maximum of 25 pounds and up to 10 pounds repetitively. She can stand/walk and can sit for one hour at a time each and, during an eight-hour workday with normal breaks, for a total of six hours each. She can bend, stoop, squat, kneel, crawl and climb occasionally. She must avoid heights and moving machinery.

Using this RFC, the ALJ determined that Soppe met her burden of proof at the fourth step, because she was unable to perform her past relevant work. However, at the fifth step, the ALJ determined that Soppe, based on her age, education, previous work experience, and RFC, could work at jobs that exist in significant numbers in the national economy. Therefore, the ALJ concluded Soppe was “not disabled.”

### ***B. Soppe’s Residual Functional Capacity***

Soppe contends that the ALJ erred in two respects. First, Soppe argues that the ALJ failed to give proper weight to the opinions of her treating physicians. Second, Soppe argues that the ALJ erred in disregarding her subjective complaints of disabling pain. Soppe requests that the Court reverse the Commissioner’s decision and remand it with directions to award benefits. Alternatively, Soppe requests this matter be remanded for further proceedings. The Commissioner argues that there is substantial evidence in the record as a whole which supports the ALJ’s decision; and therefore, the decision should be affirmed.

#### ***1. The Opinions of Soppe’s Treating Doctors.***

Soppe disputes the ALJ’s decision to accord Dr. Chapman’s opinion that she could lift a maximum of 25 pounds the greatest weight when compared to the opinions of her other treating physicians. Specifically, Soppe argues that Dr. Mulderig and Dr. Chen and the Team provided opinions which suggested 25 pounds was too much weight for her to lift. Soppe points out that Dr. Mulderig limited her to lifting a maximum of 10 pounds and Dr. Chen and the Team limited her to lifting 15 pounds from waist level to chest level.<sup>9</sup>

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<sup>9</sup> Dr. Chen and the Team also limited her to lifting 5 pounds from a deep squat position and 20 from 10 inches off the floor.

Soppe further points out that Dr. Chapman's opinion was provided in an office note while the opinions of Dr. Mulderig and Dr. Chen and the Team were based on conclusions from functional activity assessments and testing. Soppe also notes that Dr. Mulderig and Dr. Chen and the Team provided their opinions more recently than Dr. Chapman. Specifically, Dr. Chapman's opinion was from September, 2003, Dr. Mulderig's opinion was from August, 2004, and Dr. Chen's and the Team's opinions were from September, 2005. According to Soppe, the record does not support the ALJ's decision to accord Dr. Chapman's opinion the "greatest weight."

The Commissioner argues that neither Dr. Mulderig nor Dr. Chen and the Team were treating sources at the time they rendered their opinions concerning Soppe's lifting limitations. Specifically, the Commissioner points out that Dr. Mulderig's August, 2004 opinion was given as part of a consultative examination at the request of DDS. The Commissioner notes that Dr. Mulderig did not start treating Soppe for chronic back pain until after August, 2004. Similarly, the Commissioner points out that when Dr. Chen and the Team provided their opinions, Soppe had seen Dr. Chen two or three times and visited the Team once. The Commissioner argues that two to three visits with Dr. Chen and the Team is insufficient to create a treating doctor relationship with Soppe.

The opinion of a treating physician:

should not ordinarily be disregarded and is entitled to substantial weight. A treating physician's opinion regarding an applicant's impairment will be granted controlling weight, provided the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the record.

*Singh v. Apfel*, 222 F.3d 448, 452 (8th Cir. 2000) (citations omitted). The regulations provide that the longer the treating relationship between a physician and a patient, the more weight should be given to that treating physician's medical opinions. See 20 C.F.R. § 404.1527(d)(2)(I). Furthermore, an ALJ is "encouraged to give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist." *Singh*, 222 F.3d at 452. The regulations

require an ALJ to give “good reasons” for giving weight to statements provided by a treating physician. *See* 20 C.F.R. § 404.1527(d)(2). “Although a treating physician’s opinion is entitled to great weight, it does not automatically control or obviate the need to evaluate the record as a whole.” *Hogan v. Apfel*, 239 F.3d 958, 961 (8th Cir. 2001) (citing *Prosch v. Apfel*, 201 F.3d 1010, 1013 (8th Cir. 2000)).

The ALJ gave the following reason for according Dr. Chapman’s opinion the greatest weight “[a]s Dr. Chapman is a treating source and has had the contact that would allow him to draw his own conclusions regarding [Soppe’s] limitations as opposed to having to rely on [Soppe’s] own statements . . . his assessment is to be accorded the greatest weight.” While it may be true that Dr. Chapman treated Soppe longer than Dr. Chen and the Team and the opinion of Dr. Mulderig pertinent to this issue was provided on a consultative basis, the record demonstrates that Dr. Chapman’s opinion was based on follow-up meetings with Soppe which did not include functional activity testing. The opinions of Dr. Mulderig and Dr. Chen and the Team, however, were based on functional activity testing and were performed more recently than Dr. Chapman’s follow-up meetings with Soppe. Having reviewed the record, the Court finds that the ALJ failed to adequately address the reasons for according the opinions of Dr. Mulderig and Dr. Chen and the Team less weight than the opinions of Dr. Chapman. The ALJ has a duty to fully and fairly develop the record in a social security disability review case. *Snead v. Barnhart*, 360 F.3d 834, 838 (8th Cir. 2004). Furthermore, the regulations require an ALJ to give “good reasons” for giving weight to statements provided by a treating physician. *See* 20 C.F.R. § 404.1527(d)(2). The Court determines that it is appropriate to remand this case to allow the ALJ to further consider the opinions of Dr. Chapman, Dr. Mulderig, and Dr. Chen and the Team with regard to the weight those opinions should be accorded regarding Soppe’s limitations on lifting. On remand, the ALJ should also further develop his reasons for giving the opinion of one doctor more weight than the opinion of another doctor.



## ***2. Credibility Determination.***

Soppe provides nothing more than a conclusory argument that the ALJ erred in disregarding her complaints of disabling pain. In her brief, Soppe states:

The ALJ's statement that [Soppe's] complaints are not supported by medical evidence of record is not factually correct. To the contrary[, Soppe's] complaints of disabling pain are completely consistent with the vast majority of the medical evidence or record including the opinion of two treating physicians, the physical therapists who performed the spine rehab evaluation, and nearly every office note from the three years of treatment contained in the record.

(Soppe's Brief at 19) Soppe provides no reference to any place in the record to support her conclusory argument. Soppe does mention four instances of "objective findings by health care providers" that support her disabling pain and fatigue. The four instances are: (1) "Marked spasm along the perithoracic region and paralumbar musculature over top of her plating;" (2) "[r]educed range of motion in the lumbosacral spine as well as the shoulders bilaterally;" (3) "[p]ain to palpitation along lower thoracic paraspinals;" and "[r]eproduction of pain when testing gluteal attachment muscles."<sup>10</sup> Soppe provides no argument as to how these four instances of "objective findings by health care providers" support her allegations of disabling pain.

The Commissioner argues that the ALJ addressed Soppe's subjective complaints and addressed his reasons for finding them not credible. Specifically, the Commissioner points out that the ALJ articulated inconsistencies in Soppe's testimony and considered the medical evidence in making his credibility determination. The Commissioner concludes that the ALJ's findings with regard to Soppe's credibility are supported by substantial evidence; and therefore, his decision should be affirmed.

When evaluating the credibility of a claimant's subjective complaints, the ALJ may not disregard them "solely because the objective medical evidence does not fully support them." *Polaski v. Heckler*, 739 F.2d 1320, 1322 (8th Cir. 1984). However, the absence

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<sup>10</sup> See Soppe's Brief at 19.

of objective medical evidence to support a claimant's subjective complaints is a relevant factor for an ALJ to consider. *Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citation omitted). "The [ALJ] must give full consideration to all the evidence presented relating to subjective complaints, including the claimant's prior work record, and observations by third parties and treating and examining physicians relating to such matters as: (1) the claimant's daily activities; (2) the duration, frequency, and intensity of the pain; (3) precipitating and aggravating factors; (4) dosage, effectiveness and side effects of medication; [and] (5) functional restrictions." *Polaski*, 739 F.2d at 1322. However, the ALJ is not required to "explicitly discuss each *Polaski* factor." *Wagner v. Astrue*, 499 F.3d 842, 851 (8th Cir. 2007) (quoting *Goff*, 421 F.3d at 791). Subjective complaints may be discounted if inconsistencies exist in the evidence as a whole. *Pelkey v. Barnhart*, 433 F.3d 575, 578 (8th Cir. 2006) (citing *Polaski*, 739 F.2d at 1322). However, the ALJ must give reasons for discrediting the claimant. *Id.* (citing *Strongson v. Barnhart*, 361 F.3d 1066, 1072 (8th Cir. 2004)). Where an ALJ seriously considers, but for good reason explicitly discredits a claimant's subjective complaints, the Court will not disturb the ALJ's credibility determination. *Johnson v. Apfel*, 240 F.3d 1145, 1148 (8th Cir. 2001) (citing *Pena v. Chater*, 76 F.3d 906, 908 (8th Cir. 1996)); *see also Guilliams*, 393 F.3d at 801 (explaining that deference to an ALJ's credibility determination is warranted if the determination is supported by good reasons and substantial evidence). "The credibility of a claimant's subjective testimony is primarily for the ALJ to decide, not the courts." *Wagner*, 499 F.3d at 851 (quotation *Pearsall*, 274 F.3d at 1218).

In determining that Soppe's subjective complaints of pain were not credible, the ALJ found:

Although [Soppe's] activities are limited and she has complained that her pain has not changed, she is still capable of watching over her three children, visiting relatives in the area in which she lives, shopping for groceries and going to school herself. . . . [Soppe's] assertions are not supported by the medical and other evidence of record, and although not to be ignored, cannot be given significant weight.

(Administrative Record at 20) Having reviewed the record, the Court finds that the ALJ seriously considered Soppe's subjective complaints of pain and discredited those complaints for good reasons. *See Pelkey*, 433 F.3d at 578 (good reasons must be given for discrediting a complainant); *see also Tellez*, 403 F.3d at 957 (deference to and ALJ's findings regarding the credibility of a claimant is supported by an ALJ's finding that a claimant's activities of daily living are inconsistent with his or her allegations of total disability). Because the ALJ found inconsistencies in Soppe's daily activities and her allegations of total disability, the Court will not disturb the ALJ's credibility determination. *See Johnson*, 240 F.3d at 1147 (citing *Polaski*, 739 F.2d 1320).

### ***C. Reversal or Remand***

The scope of review of the Commissioner's final decision is set forth in 42 U.S.C. § 405(g) which provides in pertinent part:

The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing.

42 U.S.C. § 405(g). The Eighth Circuit Court of Appeals has stated that:

Where the total record is overwhelmingly in support of a finding of disability and the claimant has demonstrated his [or her] disability by medical evidence on the record as a whole, we find no need to remand.

*Gavin v. Heckler*, 811 F.2d 1195, 1201 (8th Cir. 1987); *see also Beeler v. Brown*, 833 F.2d 124, 127 (8th Cir. 1987) (finding reversal of denial of benefits was proper where "the total record overwhelmingly supports a finding of disability"); *Stephens v. Sec'y of Health, Educ., & Welfare*, 603 F.2d 36, 42 (8th Cir. 1979) (explaining that reversal of denial of benefits is justified where no substantial evidence exists to support a finding that the claimant is not disabled). In the present case, the Court concludes that the medical records as a whole do not "overwhelmingly support a finding of disability." *Beeler*, 833 F.2d at 127. Instead, the ALJ simply failed to fully and fairly develop the record with regard to the proper weight to be given to the opinions of Dr. Chapman, Dr. Mulderig, and

Dr. Chen and the Team on the issue of Soppe's lifting limitations. Accordingly, the Court finds that remand is appropriate.

#### ***VI. CONCLUSION***

The Court concludes that this matter should be remanded to the Commissioner for further proceedings. On remand, the ALJ should develop the record fully and fairly, and address his reasons for giving greater or lesser weight to the opinions of Dr. Chapman, Dr. Mulderig, and Dr. Chen and the Team with regard to Soppe's lifting limitations.

#### ***VII. ORDER***

For the foregoing reasons, it is hereby **ORDERED**:

This matter is **REVERSED** and **REMANDED** to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings as discussed herein.

DATED this \_\_\_\_\_ day of November, 2007.

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JON STUART SCOLES  
United States Magistrate Judge  
NORTHERN DISTRICT OF IOWA